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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,933	11/06/2001	Diane Jones	026032-3670	5497

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EXAMINER	
NELSON JR, MILTON	

ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/993,933	JONES ET AL.
	Examiner	Art Unit
	Milton Nelson, Jr.	3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 July 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,28-32,34-39 and 41-67* is/are pending in the application.

4a) Of the above claim(s) *52-67* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 28-32, 34-39, 48-51* is/are rejected.

7)☒ Claim(s) *41-47* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 9, 2004 has been entered.

Election/Restrictions

Newly submitted claims 52-67 are directed to an invention (vehicle) that is independent or distinct from the invention (seat) originally claimed for the following reasons: The inventions are distinct, each from the other because of the following reasons:

Inventions I (seat) and II (vehicle) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other

combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination requires at least a double jersey construction. The subcombination has separate utility such as use as a non-vehicle seat.

Since applicant has received an action on the merits for the originally presented invention (seat), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 52-67 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 28-32 and 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooks et al (5235826). Note the seat frame (metal frame (col. 3, line 9) or core member (3)), suspension fabric (2), shrink yarn (col. 2, lines 15-16), double jersey construction (see col. 3, line 17), wherein the shrink yarn is selected such that

prior to shrinking, the suspension fabric cover is less taut to the seat frame than after shrinking the shrink yarn (heat treatment can occur after knitting as indicated in col. 2, lines 9-11), and seatback cover (col. 2, line 2). Note that the product limitations of these claims are met by Brooks et al (the claims are drawn to "a seat including a seat frame and cover"), therefor the process limitations have not been given patentable weight. Also note that the cover is directly coupled to the seat frame (3) or coupled by way of the portion (3) to the metal frame. Note that the occupant sits directly on fabric (2) and is thereby at least partially supported by the fabric (2).

Claims 1, 4, 28-32, 34-39 and 48-51 are rejected under 35 U.S.C. 102(a) as being anticipated by Lee et al (6279999). Note the seat frame (35 or 37), suspension fabric (38), shrink yarn (52 or 54), another yarn (the other of 52 or 54), wherein the shrink yarn is selected such that prior to shrinking, the suspension fabric cover is less taut to the seat frame than after shrinking the shrink yarn (col. 1, paragraph 3). Note that the product limitations of these claims are met by Lee et al (the claims are drawn to "a seat including a seat frame and cover"), therefor the process limitations have not been given patentable weight. Also note that the cover is directly coupled to the seat frame (37) or coupled by way of the portion (37) to the metal frame. Note that the occupant sits directly on fabric (38) and is thereby at least partially supported by the fabric (38).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al (5235826) in view of Girard et al (5802882).

Brooks et al shows all claimed features of the instant invention with the exception of the another yarn being an air jet textured microfiber yarn.

Girard et al discloses use of an air jet textured microfiber yarn in a fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Brooks et al in view of the teachings of Girard et al by using an air jet textured microfiber yarn in the construction of the cover assembly. Incorporation of the microfiber yarn provides enhanced strength of the fabric construction.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al (5235826) in view of Blake (US2003/0056703).

Brooks et al shows all claimed structural features of the instant invention with the exception of the another yarn being a false twist yarn.

Blake discloses use of a false twist yarn in a layered fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Brooks et al in view of the teachings of Blake by using a false twist yarn in the construction of the cover assembly. Incorporation of the false twist yarn provides enhanced strength of the fabric construction.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (6279999) in view of Girard et al (5802882).

Lee et al shows all claimed features of the instant invention with the exception of the another yarn being an air jet textured microfiber yarn.

Girard et al discloses use of an air jet textured microfiber yarn in a fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Lee et al in view of the teachings of Girard et al by using an air jet textured microfiber yarn in the construction of the cover assembly. Incorporation of the microfiber yarn provides enhanced strength of the fabric construction.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (6279999) in view of Blake (US2003/0056703).

Lee et al shows all claimed structural features of the instant invention with the exception of the another yarn being a false twist yarn.

Blake discloses use of a false twist yarn in a layered fabric assembly.

It would have been obvious to one of ordinary skill in the pertinent art at the time of the instant invention to modify Lee et al in view of the teachings of Blake by using a false twist yarn in the construction of the cover assembly. Incorporation of the false twist yarn provides enhanced strength of the fabric construction.

Allowable Subject Matter

Claims 41-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment/Arguments

Applicant's response filed July 9, 2004 has been fully considered. Remaining issues are detailed in the above section. Claims 7-27, 33 and 40 have been cancelled. Claims 52-67 are non-elected. Applicant argues that neither Brooks et al nor Lee et al teach a suspension fabric cover where suspension of the suspension fabric seat cover is used to support an occupant. It can be seen that the occupant sits on the assembly, including the cover, therefore the cover provides some support to the occupant. Applicant argues that Brooks et al does not show a suspension fabric cover. Brooks does show a suspension fabric cover as indicated above. Applicant argues that Lee et al does not show a suspension fabric cover. Lee et al does show a suspension fabric cover. Applicant argues that neither Brooks et al nor Lee et al teach the process steps of claim 4. Claim 4 is directed to an article. The process steps are not given patentable

weight in an article claim. Applicant argues that neither Brooks et al or Lee et al teach the seat fabric having sufficient memory to return to its post-shrunk condition after the occupant has departed from the seat. Both show fabric on a cushion. As is well known in the seat art, the cushion and cover flex when an occupant's weight is placed thereon. Both members are known to return to their unloaded form (by memory) when the occupant's weight is removed. Applicant argues that the secondary references to Girard et al and Blake are not directed to a suspension fabric cover where the cover is configured to be used to support an occupant. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. New claims 41-47 contain allowable subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Milton Nelson, Jr
Primary Examiner
Art Unit 3636

mn
July 26, 2004